[Shri K. Natwar Singh]

which we have condemned since the days Gandhiji went there in 1893 and stayed there for 21 years till 1914. With great respect I have to say that we have not counted the cost on a matter of this kind. It is a fundamental matter. We are totally opposed to any kind of racism in any part of the World, whether it is black, white, brown or yellow. We are totally opposed to what is happening in South Africa, and I am grateful for the support the Members of the House have given.

SHRI GHULAM RASOOL MATTO (Jammu and Kashmir): What about the Africa Fund progress?

SHRI K. NATWAR SINGH; Well, I do not have the details. But I all can say is that the response, both from the non-aligned and from other countries has been very encouraging. We are trying to tap as many sources as we can. Unless this is a fund of a very large amount of money—I can off-hand say that unless it reaches something like one billion—we will not be able to make a dent we would like to make. We have got about 250 to 300 millions in cash and kind.

MOTION FOR MODIFICATION INTHE TERRORIST AND DISRUPTIVEACTTVITIES (PREVENTION)RULES, 1987

SHRI JASWANT SINGH (Rajas than): Sir, I beg to move the follow ing Motion: ,

"That this House resolves that in pursuance of section 29 of the Teworist and Disruptive Activi. ties (Prevention) Act, 1987, the following modifications be made in the Terrorist and Disruptive Activities (Prevention) Rules, 1987, published in the Gazette of India (Extraordinary), dated the 7th October, 1987 vide Notification G.S.R. No. 843(E) and laid on the Table of the Rajya Sabha on the 6th November, 1987, namely: —

substitute sub-rule (1) of rule 15 by the following.—

'15. Recording of confession made to police officers:—(1) A confession made by a person before a police officer and recorded by such a police officer under section 15 of the Act, shall invariably by recorded in the presence of Chief Metropolitan Magistrate or a Chief Judicial Magistrate, having jurisdiction over the area in which such a confession has been recorded. It shall be in the language in which such a confession is made and if that is not practicable, in the language used by the police officer for official purposes, or in the language of the designated Court, and it shall form part of the record; and

that this House recommends to Lok Sabha that Lok Sabha do concur in this Resolution."

Sir, the motion of amendment that I have moved is under the Rules of this House, the right which all or us have, the right which flows out of the legislative rights of the House. It arises in the enactment itself. We had voiced our difficulties at the time of the enactment now, because we continue to be dissatisfied with both the enactment and all the assurances that the then Minister of State had then given us about taking into consideration some of the points and observations that we had made about specific provisions in that piece of legislation and their not having been taken into account has persuaded me to move this amendment.

On January 25, speaking informally *to* some reoorters the Union Home Minister, hon. Buta Singhji attributed the sharply increased level of violence

in Punjab in that year, that is, the current year, to two factors: First, according to Shri Buta Singhji, the Punjab and Haryana High Court had ordered the release of 700 to 800 terrorists, and stayed operations of certain portions of the Anti-Terrorist Act, which meant—these are the exact words as reported by the Press:

"The terrorists who were rounded up after great difficulty had to be freed under court orders and their re-arrest was proving difficult."

Now. Sir, this statement is both factually incorrect, and, paradoxically enough an admission of a paralysis of the Government's Punjab policy. When we were discussing the main legislation itself, the hon. Minister •tated—if I recollect aright, these were his words.

"The criminal justice system in Punjab has come to a standstill."

I could be faulted whether he used the word standstill' or whether he used the word 'paralysed'. But he did express the sentiment that the criminal justice system in the Punjab had virtually evaporated. When I recollect that sentence, and this admission by the Union Home (Minister, that the re-arrest of terrorists is proving difficult. I am struck by the underlying irony of admission by both these gentlemen, and by this most explicit admission of the total failure of the Government's Punjab policy. Why do I say that it is factually incorrect what Sardar Buta Singh Ji said? there are two reasons why I say so. On January 19, the person who is principally in charge of the security forces in Punjab and therefore of all the anti-terrorist activities, Mr. Julius Rebeiro, in a press conference, did not even once attribute the spurt of violence in the current year to the release of terrorists. Secondly, there is also some doubt as to whether all the 800 detenues referred to by the Union Home Minister were actually at have been actually released. Fol-fewing this High Court judgment.

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the Supreme Court judged otherwise and it is my feeling that these 800 or so to whom the Union Home Minister attributes the spurt of violence have not actually been released. That is not factually correct.

I do not want to go into the reasons as to why the Government found it necessary to bring forward this piece of legislation because that has been gone into at the time of discussing the ordinance and all that we had to say on that was said on that occasion. What I now want to say is that I am struck by a fear that the Government's total approach to Punjab is just a law and order approach, as if it were merely a law and order situation, as if the seeds of Khalistan which sown in that State could be extricated, expunged or abolished merely by a law and order action. I believe such is not the case. I believe that the Government is profoundly in error if it proceeds on these lines. I have some figures here.

श्री हरबेन्द्र सिंह हंसपाल (पंजाब) : जब आप कहते हैं कि वहां मिलिटरी भेज देनी चाहिए तो फिर एक ला एण्ड आर्डर सिचुएशन ठीक होगी या पोलिटिकल ठीक होगी ।

SHRI JASWANT SINGH: I am glad that this question has been asked. Why we are asking the military to be sen* there, to cope with the problem, is commonly misunderstood. The military is not for the purpose of law and order. The military is essentially a moral force and the personnel of the military will not be there to impose law and order on Punjab because nobody can impose law or order on societies which are in turmoil. When you ask me that question, in fact you underline the importance of, the requirement of the vital necessity of having a force in Punjab that would command the moral respect of the people of Punjab and that is what underlies the B.J.P.'s call for having the Army or the military personnel in Punjab. It Is not that the B.J.P. will readily yield to it----------

श्री हरवेन्द्र सिंह हंसपाल : इसका मतलब यह हुआ कि वहां मिलिटरी भेज दी जाये कि वह वहां सालेंट स्पेक्टेटर रहे । फिर जब इस काम के लिए सरकार ने त्रिपुरा में मिलिटरी भेजी तो उसके लिए आपने आब्जेक्शन किया ।

SHRI JASWANT SINGH: My esteemed colleague whom I hold in regard is not now really discussing. He is arguing and he is arguing: on a wicket which he knows is weak. This is not the B.J.P's ground. The BJP is pleading for the sending in of the Army in Punjab not because the Bjp wants the people of punjab to be killed. , That is far from it. The requirement of the Army in Punjab and if the BJP has put it across. as one of the seven points which were mentioned in Ludhiana, is as a meral force; it is precisely because of the head to reestablish three crucial requirements of governance. I will take a minute to because of this interruption. The three cardinal requirements of governance in Hindustan, India or Bharat whichever" way you call it, and/or in Punjab 'are- iqbal, . *izzat* and *arz.* Principally, Punjab is an example where the Government's *iqbal* is now gone, the Government is not held in *izzat,* and hetre is no *arz* left in Punjab. If these three factors go away from any part of India, you will not be able to govern it, believe me. And I say it in all seriousness. Therefore, when we talk of sending the Army to Punjab, we are asking for the presence in the Punjab of a moral force so that the *izzat* of the State is reinstated. When we object to your sending the Army to Tripura, we are objecting because you are oiectorally misusing an instrument of State, one of the few remaining instruments that has this iqbal and *izzat* left. Sir, I was drawn away from my point" because I was going to illustrate how this purely law and order approach is not the approach to punjab. Sir I have some figures here and while' putting across these figures, I would request the hon. Minister 'of State to firstly correct me on this whether these figures are correct or I am in error. And if I am in error, then what are the correct figures? Sir, it is my information that in 1987 there were as many as 1247 killings in Punjab compared to 52& in 1986. I would like to know that in 1988, in barely two months that have lapsed, how many killings have taken place. I would also like to know, of these killings, how many are. of terrorists and how many the victims of terrorism. Now, I am also informed, Sir, that...

THE MINISTER OF STATE IN THE MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS AND THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI P. CHIDAMBARAM): If you just permit me, Sir, I have no objection for his asking these figures. I will try to furnish them. But I would like to know the scope of this motion. It seems to me that this motion is under Section 29 of TADA and he is proposing that a narticular rule, Eiule 15, should be substituted by another rule. If that is the scope of this motion and this debate, I would like you to tell us so, Sir. If the scope of this motion and debate is the entire policy on Punjab, then I would have to bring far more material to answer him. I do not want to give wrong information to the House.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): That is correct.

SHRI JASWANT SINGH. I think that is airly a reasonable point. I concede that. However, it is up to the hon. Minister ----------

SHRI P. CHIDAMBARAM: Thepoint is, Sir, should he ask thesequestions I will not be able to answerthem and then people will think thatquestions were asked and answers

were not given. 'It-dees not seem quite fair to me. I submit for your consideration, Sir.

SHRI JASWANT SINGH; I understand, As for what people will think, I cannot give you a guarantee.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): He cannot have the figures ____

SHRI P. CHIDAMBARAM; If he speaks for at least another. 20 minutes, then I will get the figures.

SHRI JASWANT SINGH: If the hon. Minister wants me to- guarantee him what the people will think….

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): How can he give the figures?:... (IntemiptieTis)

SHRI JASWANT SINGH: .... People are already thinking what they have to think.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI); You be within the ambit of the rules.

SHRI JASWANT SINGH; goming specifically to the debate.. . .....

SHRI P. CHIDAMBARAM: What is the scope of the debate?

AN HON..MEMBER; He is asking for the scope of the dscusson. *(Interruptions,)*

SHRI JASWANT SINGH: The scope of the discussion is very easily defined. The Government is seeking the introduction of a specific rule which it says will enable it be better improve its surveillance, its detection and its implementation of the criminal justice system in Punjab. I am attempting to say that this is not so, that in the manner and method of so doing, the Government is to be faulted. And I am attempting to put it across through you, Sir to the hon. Minister and I bave to there-

fore, inevitably cite at least some figures, something of the totality of the tragedy that is Punjab, without which I could not even come to the beginning of explaining my view-paints,. If it is the strengthening of the. criminal justice system in Pun-jah that is. being sought, then, I think, these figures are. very relevant and' are within the scope of. the. discussion . For instance, when the original Act in 1985 was passed and we had difficulties with that, it was suggested that only 1927 persons had been arrested till. July 1987, under the Terrorist and Disruptive Activities (Prevention) Act, abbreviated as TADA, that out of roughly about 2,000 persons arrested, cases have been filed only against 334, that is up-to July 1987, and that out of the cases filefl only 6 had been eonvicted up to July 1987, out of 1927 arrested under the TADA, 334 charged and out of 334 charged; only six are actually convicted. Now, Sir, if with the presence of the: TADA the Government'- then comes forward and says, we are finding it difficult. ,and "therefore you give us, what provision? That provision which specifically says. The provision, in essence meant that. Of course, it meant all kinds of things that you could hold trial in camera, the accused would haye the onus of proving himself innocent, that he would be assumed to be guilty but those things . are not under discussion.- The specific aspect under dsicussion is that the accused could also be forced to give evidence in the presence of a police officer. We had, when the original discussion took place even then maintained that this is like introducing a police raj, that this is also tantamount to totally extinguishing the distinction between the executive and the judiciary. We had also then pleaded with the hon. Minister of State for Heme Affairs, and he was kind enough then to say that he will look into the matter, he had given, no further assurance and I had made a

[Shri Jaswant Singh]

special plea that when you take such a confession, obtain such a confession, take such evidence in police presence, please introduce a small amendment to this, which states that confession will be made in the presence of a civil official, lt is not a very big change that was required. But it was an essential and a vital change which would have preserved the distinction between the executive and the judiciary and therefore I would say that in place of the existing sub-rule (1) of rule 15, the following may please be substituted. Now, I do not want to read out the entire substitute sub-rule and take the . time of the House because it is with everybody. All that the essence of lt says; the crux of it is that con. fession made—I am skipping various portions — shall invariably be recorded in the presence of the Chief Metropolitan Magistrate or a Chief Judicial Magistrate. That was the substance of what I had said even earlier. This is the substance of what my amendment attemptf to now seek.

Sir, I would just conclude. This is not a full-fledged debate on Punjab. What we are trying to do is to exercise our right as a Member of the House that if we can participate in the process of legislation, and I was attempting earlier to submit my point to the hon. Minister of State for Parliamentary Affairs that if we have a right to participate in the legislative process, then I believe as a Member of this House that we have a corresponding responsibility to . scrutinise the rule-making procedure and should we find that come of these rules are not in harmony with what we had submitted earlier, then I beileve it is my right

SHRI P. CHIDAMBARAM: There is no dispute about it. You can certainly raise it. That is why section 29 gives you that right.

SHRI JASWANT SINGH: I would conclude by reiterating that following upon a grim tragedy in Ludhiana, the leader of my party was good enough to put across a simple seven point statement as an appeal to the Government of the direction which the Government ought to take so far as Punjab is concerned. I do not have to repeat all those points. But I would, nevertheless, like to just underline three or four of them; it will take not more than a minute. I have had the occasion to state earlier for parochial, as also for reasons of principle, that Jodhpur detenus must be released. The parochial reason is that since 1984 you have detained them in my hometown. I believe that my hometown is like an island of civilisation. It is God's immense grace that despite that detention for the past so many years, there has not been a single incident of any kind to disturb the tranquil civility of that town. Please do not stretch it to a breaking point. Second is the aspect of principle. You have kept them detained for the past so many years. If you have kept them detained, why do you not charge them? Why do you not bring them to trial? If amongst them there are some who are guilty, by all means hang them if the law so demands and if the law so permits. But if you keep them arrested—hundreds of them; 364 of them if I am not mistaken—month after month, t would like to share this information with the hon. Minister that this is already causing discontent in Jodhpur; people come and tell me, if they are criminals, why don't you punish them and if they are not criminals, why do you detain them and why do you serve them 'badam' and 'ghee and everything of that kind? You are placing immense strains upon us. For Heaven's sake, try them; punish them if they are guilty. And if they are not guilty, release them.

Then about 1984 riots in Delhi and in parts of North India . . .

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): What has it to do with it? It does sot come withia tin scaps of this

SHRI JASWANT SINGH: It is the ictims of 1984 and the victimised of 1984, ecause that hangs like a sword; we do ot even do a simple thing like discussing Ranganath Mishra report. I do not know that is stopping you.

Finally, the stage has come when an nitiative is needed from the Prime Minis-er. It disturbs me; it alarms me and it worries me that in all these years, the 'rime Minister has not found it fit to visit his trouble-torn State of the Union. Please nark my words; please heed our warning. Don't treat our concern as an rrelevant irrintant. Your Punjab policy las reached a *cul de sac.* Recognise the blind alley in which you are. Retrace your steps and reorganise your thoughts, because Punjab is vital to the unity of this sation. Thank you.

The question was proposed.

SARDAR JAGJIT SINGH AURORA (Punjab): Mr. Vice-Chairman, I rise to support the Motion for modification in the Terrorist and Disruptive Activities (Prevention) Rules, 1987.

THE VICECHAIRMAN (SHRI JAGESH DESAI) Will you complete in five minutes?

SARDAR JAGJIT SINGH AURORA: Please let me carry on because before I even start, you ask me. You know I do wot take more time like some others.

Sir the Act, when it was introduced in 1984 itself, was harsh and was accord ingly resented by the people because it went against the basic tenets of a free democratic society. The Administration has to realise that you cannot bring about peace and harmony by coerslon or suppression specially when such laws and Acts are directed against a particular segment of the society. Imposition of inch Acts, by implication, shows the utter failure of the Government to exercise authority by consent. A popular Government which fails to get the co-operation of its people and has to resort to such coercive measures lt loses its moral authority to govern. This *in* what has really happened in Punjab. Having failed in its efforts to bring about normalcy in spite of such harsh___

SHRI HARVENDRA SINGH HANSPAL: Sir, on a point of order. Is it a debate on Punjab. The scope of the Motion before the House is limited? It is only in regard to substitution of sub-rule (1) of rule 15.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Mr. Aurora, the scope is very limited.

SHRI HARVENDRA SINGH HANSPAL: Sir, it is specifically mentioned here that it is in regard to substitution of sab-rule (1) of rule 13.

SARDAR JAGJIT SINGH AURORA: I am coming to that.

SHRI HARVENDRA SINGH HANSPAL: If it is a debate then everybody should be allowed.

SARDAR JAGJIT SINGH AURORA: I have to talk about the Act before I come to the Motion proper. Why are you trying to guillotine it? After all, these are the things which have happened and one has to learn by experience. *(Interruptions)* Sir, I have taken only two minutes. If you do not want me to go on further, I will sit down. This is an unnecessary objection. I will go on now. The point I want to make here is that if the Gov-ernment does not learn its lesson and still persists in making the Act more draconian and fearsome through these Rules which were brought into force in 1987, 1 can assure you that *it* is not going to curb violence In fact, it will give greater licence to the corrupt administration to misuse it and extract money from th* parents and relatione of innocent people who are taken Into custody and released only after getting money from them. All it will do is that it will remit is further bitterness against the Government.

Sir, I support this eaodiHcanon knowing that it is going to be of very little use. But I think as a representative of the people, We must enwre that we do the

[Sardar Jagjit Singh Aurora]

little bit that we can do. Therefore, the introduction of this modification which ensures that a confession is not made before a police official alone—which will not be accepted by anybody as being a willing confession, a voluntary confession—but when it is made in the presence of a reasonably senior judicial official also it will carry more weight. It will also-mean that the public would realise that the confession has .certain acceptability.

Having said this, at this stage, I would like to compliment by hon. colleague for having taken the initiative in bringing forth this Motion. I would like to appeal to the House to adopt it by acclamation. It will prove that we as responsible representatives of the people have not lost our sense of rationality and justice.

I would now go on from here and make a few remarks about - a subject which was brought up during the discussion and it is important that I should comment on them. One point is about the deployment of the Army in Punjab.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): Mr. Aurora, as I pointed out to you earlier, the scope of the discussion is limited. '

SARDAR JAGJIT SINGH AURORA : It is extremely important and I-will tell you why. The introduction of the Army in 1984 has done immense harm not only to Punjab but to the entire country as well. what is more, it is likely to be more harmful...

SHRI DARBARA SINGH (Punjab): Mr. Vice-Chairman, Sir, I would like to bring to your notice that this is not the issue under discussion here.

SARDAR JAGJIT SINGH AURORA: Sir, you have permitted... *(Interruptions)* It is *my* right. *(Interruptions)*

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): This is not the subject-matter, Mr. Aurora

SARDAR JAGJIT SINGH AURORA: In that case, you should not have permitted Mr. Jaswant Singh to go on.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): This is not within the scope of the discussion. If you want to say anything on this particular rule, I will allow you.

6.00 P.M.

SARDAR JAGJIT SINGH AURORA: You first raise a point. Discussion takes place. When I am going to say something, why should I not be allowed I have to reply to the point raised by *(Interruptions)* .

THE VICE-CHAIRMAN (SHRI J(AGESH DESAI): No, no, the scope of this Motion is limited.

SHRI LAL K. ADVANI (Madhya Pradesh) Shri -Hanspal has said something and, therefore, he has to reply to him.

SARDAR JAGJIT SINGH AURORA: As a retired soldier I have a duty to warn the Government that if you put the army back in Punjab again, I think you are going to break up the army and that is the only structure, that is the only organisation which. is providing stability to this country. I, therefore, feel it is my moral duty to talk about it and say it with all the emphasis at my command. *(Interruptions).* This is my view. I agree with him about the motion but I disagree agree with him about the introduction of the Army.

As regards the Jodhpur detenus and the horror that took place in November 84 I intend to talk about this in due course when Punjab comes up for discussion.

श्री सत्य प्रकाश मालवीय (उत्तर प्रदेश) : माननीय उपसभाध्यक्ष महोदय, श्री जसवंत सिंह जी का जो संशोधन है, जो संकल्प है, उससे मैं सहमत हूं। क्योंकि यह एक उपयुक्त संशोधन है ।

महोदय, जो आतंककारी और विध्वंसकारी क्रियाकलाप (निवारण) नियम, 1987 में पारित किया गया था, इसमें जो भी प्रावधान हैं, उनके अनुसार इसके नियम 28 में सरकार को नियम बनाने का अधिकार दिया गया है । इस नियम की धारा भी 5 ही है । अगर केन्द्रीय सरकार इस देश में पुलिस राज कायम नहीं करना चाहती, यह सरकार अगर जंगल का राज देश में कायम नहीं करना चाहती, जो श्री जसवंत सिंह जी के इस संशोधन को स्वीकार करने में सरकार को कोई आपत्ति नहीं होनी चाहिए । उनका जो संशोधन है, वह बहुत ही निर्दोष है क्योंकि इस नियम की धारा 15 में यह प्रावधान है यदि कोई पुलिस अधिकारी की हिरासत में हो । तो वह अपने विरुद्ध जो कुछ भी कहेगा, उसका प्रयोग उसके खिलाफ मुकदमा चलाने के लिए शहादत के रूप में नहीं माना जाएगा । यह इंडियन एविडेंस ऐक्ट और क्रिमिनल प्रोसीजर कोड में भी कहा गया है । इसमें विशेष व्यवस्था की गई है कि यह कहा गया है कि सुपरिंटेंडेंट आफ पुलिस अगर अपने कर्तव्यों का पालन करे तो उसको मुजरिम का बयान लेते समय यह बताना हो । कि वह अपना बयान देने के लिए स्वतंत्र है । यदि वह अपने कर्तव्य का पालन नहीं करता है, या हवालात के अंदर वह बयान लेता है तो उसको देखने के लिए कोई वहां होना चाहिए । जसवंत सिंह जी ने यह संशोधन रखा है कि पुलिस अफसर जो कुछ करेगा, किसी का बयान लेगा तो चीफ मैट्रोपोलिटन मजिस्ट्रेट या जिल मजिस्ट्रेट वहां उपस्थित रहेगा । अगर वह उपस्थित रहेगा तो वह देखेगा कि कानून का पालन हो रहा है या नहीं क्योंकि इस देश में पुलिस क्या है, यह सब जानते हैं । इलाहाबाद हाईकोर्ट के जस्टिस मुल्ला ने अपने फैसले में कहा था--- this police force is an organised lawless force of dacoits and looters. वे यहां के सदस्य भी रहे । यह जस्टिस मुल्ला का फैसला था ।

श्रीमन्, बागपत में क्या हुआ ? दिल्ली से 80 किलोमीटर दूर वहां पुलिस थाने के अंदर हमारी बहन के साथ किस तरह का काम हुआ, यह सब जानते हैं । डिस्ट्रिक जज ने पुलिस ज्यादती के फैसले में जो निर्णय दिया उसमें 6 पुलिस कर्मचारियों को फांसी की सजा दी गई । पुलिस थाने में यह काम हुआ ।

तीसरा उदाहरण बिहार, के परिया स्थान का है जहां कि पुलिस ने सामूहिक रूप से बलात्कार किया । तमिलनाडु ऐसेंबली में आपने देखा कि वहां जन प्रतिनिधियों को पुलिस ने अंदर घुसकर लाठी से मारा और कई लोग घायल हुए । तो इनके संशोधन प्रस्ताव में जो बातें दी गई हैं उनको स्वीकार करने में आपको क्या आपत्ति है ? इन्होंने कहा है कि यदि एस०पी० या पुलिस आफिसर अपने कर्तव्य का पालन नहीं करेंगे तो नियमों के अंतर्गत उनके भी विरुद्ध कार्यवाही होनी चाहिए । यह देखने के लिए कि वे नियमों के अंतर्गत काम करते हैं या नहीं, अपने कर्तव्य को निभाते हैं या नहीं, इसको देखने के लिए वहां न्यायिक मजिस्ट्रेट या उच्चाधिकारी मौजूद रहना चाहिए । इसके साथ मैं यह निवेदन करना चाहता हूं कि यह जो हो रहा है यह कोई समाधान नहीं है । पंजाब में इस सरकार को पापूलर गवर्नमेंट स्थापित करनी चाहिए । इन शब्दों के साथ मैं पुनः निवेदन करूंगा कि जो जसवंत सिंह जी का निर्दोष संशोधन है इसको आप को स्वीकार कर लेना चाहिए ।

SHRI GHULAM RASOOL MATTO (Jammu and Kashmir) Mr. Vice-Chair man, Sir, I am grateful to Shri Jaswant Singh because' he has sought to use a right which in my career of six years in the Rajya Sabha had not been exercised by any Member—that- is,.each Member can put an amendment in the rules fram ed under the Act passed by this Parlia ment which *are* otherwise" laid on the Table of the House. For that *I* am. grate ful to him.

Sir, I view this amendment-from an- entirely different angle. I do not think the crime situation in Punjab is akin to any other situation of law and order. Here

[Shri Ghulam Rasool Matto]

we are faced with a situation, as 1 have understood it from Shri Jaswant Singh's speech, wherein terrorists sentenced by lower courts in Punjab have been acquitted by the High Court or higher courts for the simple reason that such persons pleaded that the confession was extorted from them under duress. As a result of that, the terrorists have been set free and in that process they have become double terrorists. From that point of view, if this is the situation, and if he hon. Minister tells us how many such cases have come to his notice, then it is a very serious thing.

The second point is that it is a very innocuous sort of suggestion which has been made by Shri Jaswant Singh—that is the confession being made by a terrorist must be made before a Magistrate because this strengthens the hands of the persons who are enforcing law and order or the Anti-Terrorist Act This is not something which hampers them. So I strongly support this suggestion and I strongly support this Resolution. I would request the hon. Minister, although J am an ally of the Congress, that as a Congressman he should also think dispassionately about it and unequivocally accept this amendment. I know he may come out with the plea ...

THE VICE-CHAIRMAN (SHRl JAGESH DESAI): Leave that to him

SHRI GHULAM RASOOL MATTO: . . mat section 15 of the man Ami-Terrorist Act has got to he amended. Even if it has to be amended, it may be amended because this way atone we can nip the terrorist activities in Punjab iu the bud because terrorism in Punjab has got a direct bearing on Jammu and Kashmir which is a neighbouring State.

With these words, I strongly support the amendment put forward by Shri Jaswant Singh.

SHRI SATYA PRAKASH MALAVT YA: Since he is an ally of the Congress that is another reason why you should accept this suggestion.

SHRI B. SATYANARAYAN REDDY (Andhra Pradesh): Sir, the Motion for modification in the Terrorist and Disruptive Activities (Prevention) Rules, 1987, moved by Shri Jaswant Singh is very important from the point of view of the present situation prevailing in Punjab and other parts of the country. We have to view the Motion for amendment in the present context. The Motion is very simple. Usually, confession is recorded by the police and later on when the confessor appears in the court, he may deny it. Such things are going on. The suggestion is very simple. The confession made by a person before a police officer and recorded by such a police officer under section 15 should invariably be recorded in the presence of the Chief Metropolitan Magistrate or a Chief Judicial Magistrate having jurisdiction over the area in which such a confession has been recorded. It is very simple and I do not mink Government should have any reservations or objections to accepting it. There should be no objection on the part of Government. And the confession should be recorded! in the language in which the accused or the person concerned makes it Otherwise, what will happen is, if the confession is recorded in a language other than the language the confessioner or the accused understands, it may not be understood by him. So, it is natural, it is very essential that it should be recorded in the language of the person who makes the confession, and if the person Is illiterate, it should be the language of the court or the language of the officer. It should be read ont to him, and it should be explained fully and that too in the presence of the Magistrate. '

I am very thankful to Mr. Jaswant Singh for bringing thi* Motion, and I request the Government to accept this Motion without any condttfoe.

SHRI DARBARA SINGH: Before the Minister replies I would like to bring to year notion that I have heard certain speeches here. They say that some Justice should do it All right.

SHRI JASWANT SINGH; No.

SHRl DARBARA SINGH; Please listen. They should keep in view that while innocent people have been killed by terrorist in Punjab, no witness is coming forward, and statements are given by terrorists, "I have killed so many persons here and there". What should be done about this? This is a problem which should be thought about. Has anybody given any suggestion about what should be done about it? *(Interruptions)*

SHRI GHULAM RASOOL MATTO: There are no two opinions about that.

SHRI DARBARA SINGH: We had a Government. They created a parallel Government.

SARDAR JAGJIT SINGH AURORA: You sabotaged it. *(Interruptions).*

SHRI P. CHIDAMBARAM: Mr. Vice-Chairman, Sir, the Motion is under section 29 of the Act. Section 29 provides that every rule should be laid before both the Houses of Parliament, and unless modified by both the Houses of Parliament the rule shall have effect as it is originally made.

Hon. Member, Mr. Jaswant Singh has proposed a modification. In fact, the only modification that he has proposed is an additional constraint to the constraints which are already there in rule 15. In fact he has adopted rule 15(1) as it has been made by Government, but has added to it the condition that the confession— quote this portion only:

shall invariably be recorded ia the presence of Chief Metropolitan Magistrate or a Chief Judicial Magistrate, having jurisdiction over the area in which such a confession has been recorded.

The conditions about language are already there in the rule made by Government.

In fact, if the hon. Member bad read the whole of rule 15 he would have noticed that the safeguards which I had promised during the course of the debate are contained in sub-role (2), sub-rale (3), sub-rule (4) and sub-rule (5) of rule 15. It is, therefore, not correct to say that Government has not gone beyond what is provided in section *15* and that Government has not fulfilled its promise to add some more safeguards.

For the record, Sir, I would like to repeat the safeguards here. The additional safeguard that we have provided is, the confession which is recorded, shall be read back or played back to the accused, [and he is at liberty to explain or add to the confession. The second safeguard that we have provided is that at the foot of the confession, the Police Officer recording the confession shall record a memorandum. And if the confession is recorded in a mechanical device, the memorandum shall also be recorded in the mechanical device.

The third additional safeguard is that he shall append a certificate which has the effect of overriding Section 29 of the Evidence Act. I will come to Section 29 in a moment.

The fourth safeguard is that the confession shall be forwarded forthwith to the Chief Metropolitan Magistrate or the Chief 'judicial Magistrate having Jurisdiction over the area in which such a confession has been recorded.

So, it is not correct *to* say that the Government has not come forward with additional safeguards while mating rules. We have made additional safeguards

Now, what is hon. Member. Mr. Jaswant Singh proposing and what is the absurd situation this will lead to? He says that confession shall be recorded by the police officer only in the presence of a Chief Judicial Magistrate *or* a Chief Metropolitan Magistrate. Today under Section 26 of the Indian Evidence Act, a judicial confession is already provided. I will read Section 26 of the Indian Evidence Act:

"No confession made by any personwhile he is in custody of the policeofficer unless it is made in the imme- diate presence of the Magistrate, *shall* be proved against such a person."

[Shri P. Chidambaram]

When I moved the Act and when we made Section 15, we said that we want to make a graduate departure from the rule in Section 25. Section 25 forbids a confession to a police officer. Section 26 permits a confession to a Magistrate. That is already there in today's law. We wanted to move away, from the rule in Section 25, and Section 26 is already available to us.

Now the rule that the hon. Member is proposing takes us back to where we started and makes it worse. You say while the Act provides for a confession before any Magistrate under the Terrorist and Disruptive Activities (Prevention) Act, I must get the confession only before a Chief Judicial Magistrate or a Chief Metropolitan Magistrate. Then what is the meaning of Section 15? Section 15 is intended to take the law away from the position Which is there in Section 25 *viz.* no confession to a police officer shall be admissible. I said we are making a graduated .response. There is no other country in the world in which, confession *to* a police officer is inadmissible. It is admissible in England, it is admissible in France, it is admissible in the USA and it is admissible in every other country of. the world. In India, as a vestige of colonial rule we do not trust any of our police officers, be it a Superintendent of Police, be it a DIG, or be it an I.G. of Police. And I said a time has come to remove the slur on our police forces and give this power to a very senior police officer to record a confession.' The Section, therefore, says: "The confession shall be recorded by an officer, not less than the rank of the Superintendent of Police". That is what we have made in Section 15.

You now want to go back not only to Section 25, but you want fo go back even beyond Section 26 and make it more difficult. Under Section 26 I can get a confession before any Magistrate today. But you say no, I must get confession only before a Chief Judicial Magistrate. Sir, I am afraid the hon. Member has not lite appreciated the implications of the amendments that he is proposing He has not, with great respect to him, read either Section 25 or Section 26 of the Evidence Act. The rule that he is pro posing will make a mockery of Section 15 of the Terrorist, and Disruptive Activi ties (Prevention) Act, will make it more difficult than what is there under the Indian Evidence Act.

I would, therefore, say this rule which he is proposing does not fit with the scheme of things and the rules that we have made. The safeguards that we have added in sub-rule 2 to sub-rule 5 of Rule 15 are more than adequate. If any more safeguards are to be made consistent with Section 15 of the Terrorist and Disruptive Activities (Prevention) Act and Section 26 of the Indian Evidence Act, I am willing to consider those amendments, but certainly not the amendment that he is proposing.

He wanted some figures. I do not know whether those figures are quite relevant now for this debate, but since he wanted, let me give them to him. In 1987, 910 people were killed for which we are deeply concerned. At the same time, 95 policemen were killed. • 333 extremists-were killed and 3,750 extremists were arrested IN January, 1988, 143 people belonging to all communities have been killed - far which the Government expresses graxe'concern. The policemen have been killed in the month of January. Sixteen extremists have been killed and 171 extremists have been arrested. The fight against terrorism cannot be fought with faint hearts or a weak will. This war against terrorism is being waged in Punjab. It is the policemen who are in the forefront of this struggle. I said then and I say it now. The reasons are not too difficult to understand. The judicial system remains partly paralysed in Pun- jab. It is the police who are in the forefront of the struggle. It is to that police force represented by a senior" police officer namely, the Superintendent of Police that we have given the power of taking confession from an accused subject to very many safeguards. Let us not take away the few tools that we have

given to our policeman who are fighting for the unity and integrity of this country.

SHRI JASWANT SINGH: Mr. Vice-Chairman, *Sir,...(Interruptions)* They are free to leave the House. So far as the hon. " Minister for State's explanation . is concerned, with one aspect I am in total agreement. He is quite right in observing that I am not a lawyer. I am actually not a lawyer and I have no aspirations of now becoming a lawyer either. Certainly not and I cannot eyen pretend to cross legal swords with an eminent barrister like the hon. Minister of State. That is not my intention. Therefore, when he| finds fault with my in familiarity with section 25 and 26 of the Indian Evidence Act. I do not treat that as a deficiency *per se* and I would always defer to his abilities so far as legal matters are concerned. Unfortunately, this House is not a court of law. If this House were a court of law, I would concede immediately to the hon. Minister of State, and also were this House a court of law I would not belong to it. When we discuss issues here we do not discuss them purely as legal point or as analytical cross arguments of two contending lawyers and that is where my difficulty with the Minister of Stated statement arises. He mentioned that in Punjab we are at war. In Punjab we are not at war.

SHRI P. CHIDAMBARAM : We are at war with the terrorists.

SHRI JASWANT SINGH: I would request the hon. Minister of State . . .

THE VICE-CHAIRMAN • (SHRI JACESH? DESAI) He may...

SARDAR JAGJIT SINGH AURORA: Those terrorists are your people and they belong to your party.

SHRI DARBARA SINGH: They belong to you and your party.

SARDAR JAGJIT SINGH AURORA: They belong to you and you are responsi-bye for creating them.

SHRI V. NARAYANASAMY (Pondicherry) Akali Dal is at present the terrorists.

SHRI P. CHIDAMBARAM: We are fighting a battle against terrdrists.

SHRI JASWANT SINGH; In fact, this illustrates the difference between our approach and the hon. Minister of State's approach to the deeply motivated, aeeply worrying and deeply troublesome issue which we are all confront as Indians. I could not ever and will not ever treat that the Union of India is at war with any part of India. I cannot concede to the hon. Minister of State . . .

THE VICE- CHAIRMAN (SHRI JAGESH DESAI); He has not said any. part of India. He has said only the terrorists.

SHRI SATYA PRAKASH MALAVIYA : Terrorists are killing innocent people and police are also killing innocent-people. *{Interruptions).* -

SARDAR JAGJIT SINGH AURORA: You are creating more terrorists by this attitude. -

SHRI P. CHIDAMBARAM: This is a battle against terrorists and against terrorism.

श्री हरवन्द्र सिंह हंसपाल : वह तो हमने इनहेरिट किया है आपकी गवर्नमेंट से . . . (व्यवधान)

श्री सुरेन्द्रजीत सिंह अहलुवालिया (बिहार): टेरोरिज्म तो तुम्हारी स्टेट में भी है।. . . (व्यवधान)

SARDAR JAGJIT SINGH AURORA: You are creating terrorists by corruption, by corrupt police. You will never finish them by this attitude. You know it. *{Interruptions)* .

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) Mr. Reddy, please sit down. I have not given you the permission. *(Interruptions).*

SHRI JASWANT SINGH: Sir, the hon. Minister of State does gross injustice it he implies or even suggests that in our fight against the cancer of terrorism, any of us are approaching the issue any differently, yet, even when combating as virulent a form as terrorism, as anti-national an activity as the declaration of Khalistan. It would not be a war that the Union of India would be declaring on its own citizens. Even if they are aberrant citizens, you would certainly call them to account. You will question them with the greatest severity that he might *ot* the State has. But the State cannot go to war against its own citizens terrorists or no terrorists. (*Interruptions).* I would like to submit that this is not a competitive argument as to who is for terrorism or who is opposed to terrorism. Mr gallant and esteemed colleague, Lt. General, Sardar Jagjit Singh Aurora, if he, with a distinguished, life-long military service behind him finds himself sufficiently moved and persuaded to give voice to his feelings in terms filled with pain and anger, then I do believe that it is the res-ponsibility of all of us to heed him, to hear his voice, to pay attention to the sentiments which moved him to say so. That, Sir, Is the political element of thus piece of legislation. The hon Minister of State was good enough to emphasise the legal weaknesses in my amendment that I have moved. T accept those legal weaknesses. I would readily go by what-ever drafting skill that he or his department has Let him draft it. Let him be the one to draft the amendment as long as the separation of the executive and the, judiciary, as long as the principle of the victim the suspect the terrorist, whoever, not being required to give evidence in front of those that have arrested him is conceded, t do not claim to be a lawyer. I do not have the facilities of the entire apparatus of the Ministry of Home for me *to* draft out my amendments. I *do* them in my own hand and the hon. Minister of State is eminently right when he find fault with the legalese *or* the lack of drafting skill. I immediately concede it. *(Interruptions').*

SHRI CHIDAMBARAM: Sir, yon will kindly permit me to clarify Mr. Jaswant Singh has said two things. Firstly, he has sought to quible on a word which I used. But he must Understand the context in which I used it, let it be misunderstood. I said that we are engaged in a battle against terrorism, we are engaged in a fight against terrorism and we are engaged in a war against terrorism. These words I used interchangeably, and' this is a fight to the finish, we have said that. There is no compromise with terrorism. If your party, if your position is that you want to com-promise with terrorism, that is your view. As far as we are concerned, we maintain that there is no compromise. *(Interruptions)* .

SHRI SATYA PRAKASH MALAVIYA; Nobody wants *to* compromise with terrorists. *(Interruption).*

SHRI JASWANT SINGH; Sir I have not yielded.

SHRI P. CHIDAMBARAM: You did yield.

SHRI JASWANT SINGH: I withdraw my yielding.

SHRI P. CHIDAMBARAM: How can yon withdraw your yielding unless 1 yield?

SHRI JASWANT SINGH: This in mutual courtesy *(Interruptions)* I am not yielding. *(Interruptions).*

SHRI P. CHIDAMBARAM; You are taking a word out of context and you art quibbling. I say that is wrong and unfair. You must understand the context in which I am speaking. Secondly, Sir, he is trying to take shelter under an argument that I am using legalese. No. I am not finding fault with the wordf that he has used. I am finding fault with his idea with his principle. it is deficient. It does not tie up with section 15 On the contrary it does beyond what section 26 gives us. Section 26 has already given us the power to take a confession before a magistrate. You want to make life more difficult by saying it cannot be by a magistrate but only by a chief judicial magistrate. I am saying that your idea is deficient, not your language. I om saying that your principle is wrong no your draftsmanship. *(Interruptions).*

SHRI JASWANT SINGH: Mr. Vice-Chairman, Sir, the hon. Minister of State did me injustice. Perhaps he has done justice in finding fault with my idea. The hon. Minister of State is an intelligent man. Sir, he has a brain which tends to go to his head occasionally. The point was not about quibbling over words. The point is the difference over substance.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): That is what he has pointed out.

SHRI JASWANT SINGH; The hon. Minister of State's approach to the whole issue of terrorism is to stand up and question the bonafides of those of us in our party. It does not lie in his mouth.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): He has never said like that.

SHRI JASWANT SINGH: It does not lie in his mouth to say that BJP is . . . *(Interruptions).*

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): He has nevar said like that.

श्री हरेन्द्र सिंह हंसपाल इनको बहस कर लेने दीजिए । हम सुबह आकर के फैसला कर लेंगे ।

SARDAR JAGJIT SINGH AURORA: If you are at war, there is no need to make any rule. What are you driving at Why do you waste your time now? *(Interruptions).*

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): He is replying now. *(Interruptions)* He has a right to reply. His is replying now. Again I have allowed him. *(Interruptions)* What more do you want? *(tntetrupttons).*

SHRI JASWANT SINGH 1 hear expressions of impatience, Mr. Vice-Chairman. I appeal that those that arc impatient might leave. Nothing prevents them. Nothing binds them to stay here. I believe that I am on an issue of great substance. I cannot treat the subject of Punjab lightly. The Minister-of State i* entirely within his rights to find fault with both my ideas and what I am suggesting as a consequence of my idea. Equally, I think he would concede to me without questioning the bonafides of my party or my individual bonafides about the approach to terrorism, that I too have a right to disagree with it. It is that right to disagree which has brought me to the point of expressing that I do not find the hon. Minister's statement, replying to what I have submitted, satisfactory in explanation to my simple submission that when you take confession from a victim take it in such a manner that the division between the executive and the judiciary is kept intact, that they do not merge. I think that substantial point remains. *I* remain dissatisfied on that ground and because I remain dissatisfied, I move my motion of amendment.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): I shall now put the motion moved by Mr. Jaswant Singh to-vote. The question is:

"That this House resolves that in pursuance of section 29 of the Terrorist and Disruptive Activities (Prevention) Act, 1987, the following modifications be made in the Terrorist and Disruptive Activities (Prevention) Rules, 1987 published in the Gazette of India (Extraordinary), dated the 7th October,

[Shri Jagesh Desai]

1987, *vide* Notification G.S.R. No. -843(E) . and laid on the Table of the Rajya Sabha on the 6th November, 1987, namely:—

substitute sub-rule (1) of rule 15 by the following:—

'15. Recording of confession made to police officers.—(1)A confession made by a person before a police officer and recorded by such a police officer under section 15 of the Act, shall invariably be Metropolitan Magistrate or a Chief Metropolitan Magistrate or a Chief Judicial Magistrate, having jurisdiction over the area in which such a confession has been recorded. It shall be in the language in which such a confession is made and if that is not practicable, in the language used by the police officer for official purposes, or in the language of the designated Court, and it shall form part of the record and

that this House recommends to Lok Sabha that Lok Sabha do concur in this Resolution

The motion was negatived.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) The House now stands adjourned to meet at 11.00 A.M. on Monday, the 29th February, 1988.

The House then adjourned at thirtysix minutes past six of 1he clock till eleven of the clock on Monday, the 29th February, 1988.

MGIPMRND—RS I—1942 RS—30-5-88